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11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 DUANE WATERS, DEBRA
TURNER, and RUDY FAJARDO, on
15 behalf of themselves, all others
similarly situated and the general
16 public,

17 Plaintiffs,

18 vs.

19 AT&T SERVICES, INC., (formerly
SBC Services, Inc.) and DOES 1
20 through 10,

21 Defendants.

Case No: CV 09-3983 BZ

Hon. Bernard Zimmerman

**JOINT CASE MANAGEMENT
STATEMENT**

CMC: December 14, 2009
Time: 4:00 p.m.
Courtroom: G, 15th Floor

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Attorneys for Defendant AT&T SERVICES, INC.

1 Pursuant to Civil Local Rule 16-9, the parties hereby submit the following
2 Joint Case Management Statement:

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4 **1. Jurisdiction and Service**

5 This Court has jurisdiction over Plaintiffs' claims pursuant to the Class
6 Action Fairness Act of 2005, 28 U.S.C. § 1332. Venue in this District is pursuant
7 to 28 U.S.C. § 1391 (b). All named parties have been served and have appeared.
8

9 **2. Facts**

10 Plaintiffs Duane Waters and Debra Turner were employed by Defendant
11 AT&T Services as Senior Analysts (also known as Sr. Analysts or Sr. IT Analysts).
12 Plaintiff Rudy Fajardo was employed by Defendant AT&T Services as a Senior
13 Database Administrator (also known as a Sr. Database Administrator). Defendant
14 classified Plaintiffs and other similarly situated employees as exempt and did not
15 pay them overtime compensation. Plaintiffs contend that they were mis-classified
16 as exempt when in fact they were non-exempt employees under California law and
17 were therefore entitled to overtime pay for the hours they worked in excess of
18 eight (8) hours per day and/or forty (40) hours per week. Plaintiffs contend that
19 they were routinely required to work more than eight (8) hours per day and/or forty
20 (40) hours per week but did not receive overtime compensation for the hours they
21 worked in excess of eight (8) hours per day and/or forty (40) hours per week.

22 Plaintiffs also contend that they were not provided with uninterrupted,
23 work-free 30-minute meal periods for shifts in excess of five (5) hours and were not
24 compensated for missed meal periods and that Defendant also failed to provide
25 Plaintiffs with rest breaks for shifts in excess of four (4) hours throughout their
26 employment.

27 Plaintiffs contend that they and all other similarly situated current and former
28 employees with the same or similar job titles , who performed substantially similar

1 job duties, which consisted primarily of providing computer support, trouble
2 shooting and technical services, are non-exempt employees and are entitled to
3 overtime pay, penalties and interest.

4 Defendant disputes and denies all of Plaintiff's claims. Defendant contends
5 that Plaintiffs and the putative class members have been properly classified as
6 exempt from overtime under the administrative and/or computer professional
7 exemptions. Defendant further contends that it provided Plaintiffs and the putative
8 class members with meal periods, and it authorized and permitted them to take rest
9 breaks, despite their exempt status. Additionally, Defendant contends that, because
10 it properly classified Plaintiffs and the putative class members as exempt, Plaintiffs'
11 derivative state-law claims alleging entitlement to meal and rest break premiums,
12 pay stub penalties, waiting time penalties, and restitution for unfair business
13 practices, automatically fail as a matter of law.

14 15 **3. Legal issues**

16 Plaintiffs contend that the following are the main disputed points of law:

17 A. Whether Plaintiffs and members of the proposed Plaintiffs class are
18 non-exempt employees entitled to overtime pursuant to California law. See Cal.
19 Labor Code Labor Code §§ 510 and 1194. The requirements for exemptions to
20 California overtime laws are set forth in Industrial Welfare Commission ("IWC")
21 Wage Order No. 4-2001 (henceforth, "Wage Order 4"); California Code of
22 Regulations ("CCR"), Title 8 §11040.

23 B. Whether Plaintiffs and members of the Plaintiff Class were denied
24 meal and rest breaks to which they were entitled by law. See Cal. Labor Code
25 §§226.7, 512, and Sections 11-12 of Wage Order 4

26 C. Whether Defendant failed to provide Plaintiffs and members of the
27 Plaintiff Class with accurate itemized statements. See Cal. Labor Code § 226.
28

1 **4. Motions**

2 There are no pending motions.

3 Plaintiffs intend to file a motion for class certification. Plaintiffs and
4 Defendant may also file a motion for summary judgment or partial summary
5 judgment.

6
7 **5. Amendment of Pleadings**

8 At this point Plaintiffs do not intend to amend the pleadings but reserve the
9 right to do so pending further discovery and investigation. Plaintiffs propose a
10 deadline of October 15, 2010 to file any motions to amend the pleadings.

11
12 **6. Evidence Preservation**

13 The parties represent that they have taken reasonable steps to preserve
14 relevant evidence. In particular, Defendant has taken the necessary measures to
15 ensure that all relevant electronic records pertaining to Plaintiffs and the putative
16 class members are being preserved, as well as all relevant non-electronic records.

17
18 **7. Disclosures**

19 The parties are attempting to reach an agreement on informal discovery prior
20 to mediation in lieu of formal discovery and Rule 26 disclosures. If the parties are
21 unable to reach an agreement, the parties will meet and confer on a date for formal
22 Rule 26 disclosures.

23
24 **8. Discovery**

25 The parties anticipate conducting discovery relating to both class certification
26 issues and liability. Plaintiffs intend to conduct written discovery on a range of
27 issues, including, without limitation, Defendant's classification of employees, job
28 duties of potential class members, the identity of potential class members, and the

1 amount of wages which may be owed to potential class members, including hours
2 worked by potential class members. Plaintiffs intend to conduct electronic
3 discovery of Defendant's payroll database, including data from Defendant's
4 electronic time keeping systems, to obtain information regarding how potential
5 class members were paid, the hours worked, and the amount they were paid,
6 including whether they were paid overtime. Plaintiff also anticipate conducting
7 depositions, including one or more deposition pursuant to FRCP 30(b)(6).

8 Plaintiffs contend that the issues of liability and class certification are inter-
9 related and that discovery should not be conducted in phases and therefore
10 Plaintiffs disagree with Defendant's contention.

11 Defendant intends to take the depositions of the three named Plaintiffs and to
12 serve written discovery on the named Plaintiffs, and then determine what additional
13 discovery may be necessary.

14 Defendant contends that discovery should be conducted in phases, and that
15 class-wide merits discovery should be conducted only if and when a class is
16 certified.

17 The parties reserve the right to seek leave, either by Court order or
18 stipulation, to conduct more than 10 depositions if necessary. Otherwise, the
19 parties do not believe that any modifications of the discovery rules are required.
20

21 **9. Class Actions**

22 Plaintiffs bring this action on behalf of themselves and all others similarly
23 situated as a class action pursuant to Fed. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3), on
24 behalf of the following class:

25 California employees of Defendant who at any time within four years
26 of the date of the filing of this complaint performed similar job duties
27 as Plaintiffs, including, but not limited to, those holding the following
28

1 job titles: Sr. Analyst, Senior Analyst, Senior IT Analyst, Senior
2 Analyst-IT Services and Senior Database Administrator (and other
3 similar job titles) who did not receive overtime pay pursuant to the
4 California Labor Code, the California Industrial Welfare
5 Commission's ("IWC") Wage Orders and all other applicable
6 Employment Laws and Regulations.

7
8 Plaintiffs propose a deadline of December 1, 2010 to file their motion for
9 class certification.

10 Defendant contends that this case is not suitable for class treatment because,
11 among other reasons, individual issues predominate.

12
13 **10. Related cases**

14 The parties are unaware of any related cases involving the same parties or job
15 titles.

16
17 **11. Relief**

18 Plaintiffs seek monetary relief in the form of damages, restitution, penalties
19 interest and attorneys fees. The amount of monetary relief is based on the amount
20 of wages and penalties owed to the potential class members for a four year period
21 prior to the filing of this action. At this time the monetary amount is unknown as
22 the both the size of the class and the amount of overtime hours is presently not
23 known to Plaintiffs. Plaintiffs also seek injunctive relief.

24
25 **12. Settlement and ADR**

26 The parties have requested an ADR phone conference pursuant to ADR
27 Rule 3-5 which has been scheduled for December 10, 2009. The Parties have
28

1 agreed in principle to private mediation and are in the process of working out the
2 details.

3
4 **13. Consent to Magistrate Judge for All Purposes**

5 All parties have consented to having the Magistrate Judge assigned to this
6 case conduct all further proceedings, including trial and entry of judgment.

7
8 **14. Other references**

9 The parties do not believe that this case is suitable to reference for binding
10 arbitration, a special master or the Judicial Panel on Multidistrict Litigation.

11
12 **15. Narrowing of Issues**

13 At this time, Plaintiffs do not have any proposals for narrowing the issues.

14
15 **16. Expedited Schedule**

16 The parties do not believe that this case is appropriate for an expedited
17 schedule.

18
19 **17. Scheduling**

20 Plaintiffs propose the following dates:

21 Discovery cut off for all discovery: April 29, 2011

22 Deadline to hear dispositive motions: June 20, 2011

23 Pre-trial conference: July 25, 2011

24 Trial: August 16, 2011

25 Defendant generally agrees with the dates proposed by Plaintiffs, but
26 proposes that Defendant be given 90 days to complete pre-certification discovery
27 following the filing of Plaintiffs' motion for class certification. Defendant also
28

1 proposes that the parties have at least six months to complete all remaining pre-trial
2 discovery after class certification, if any.

3 Plaintiffs will meet and confer on a mutually agreeable briefing schedule for
4 the class certification motion but contend that 90 days for discovery to be
5 conducted after the motion is filed and before it is heard is unwarranted unless there
6 is an affirmative showing of good cause by Defendant.

7
8 **18. Trial**

9 This case will be tried by a jury. Plaintiffs estimate that the trial will last
10 approximately 15-20 court days. Defendant estimates that the trial will last 3-5
11 court days if limited to Plaintiffs' claims and 35-40 court days if tried as a class
12 action.

13
14 **19. Disclosure of Non-Party Interested Entities or Persons**

15 All parties have filed the "Certification of Interested Entities or Persons"
16 pursuant to Civil Local Rule 3-16.

17 Other than the named parties and the persons or entities listed in Defendant's
18 certification, counsel for Plaintiffs are unaware of any other persons or entities with
19 an interest in this matter.

20 Defendant certifies that the following listed persons, associations of persons,
21 firms, partnerships, corporations (including parent corporations) or other entities (i)
22 have a financial interest in the subject matter in controversy or in a party to the
23 proceeding, or (ii) have a non-financial interest in that subject matter or in a party
24 that could be substantially be affected by the outcome of this proceeding: AT&T
25 Services, Inc., is jointly owned by AT&T Inc., Ameritech Services, Inc. and AT&T
26 Teleholdings, Inc.

1 **20. Other matters**

2 There are no additional matters to add to this Joint Statement.

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4 DATED: December 7, 2009

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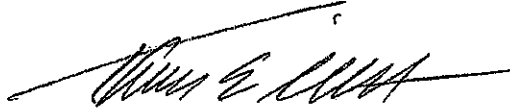
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DATED: December 7, 2009

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